# Dato' Seri (Dr) Mahadevan a/l Mahalingam v Christie Ariam Navaratnam & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S3–22–320 OF 1993
MOHD HISHAMUDIN J
30 JUNE 2004

*Civil Procedure — Striking out — Statement of claim — Whether case disclosed reasonable cause of action — Whether statement of claim scandalous, frivolous or vexatious — Rules of the High Court 1980 O 18 r 19(1)(a), (b), (c)*

The plaintiff's cause of action against the seventh defendant ('D7'), a licensed finance company, was based on fraudulent misrepresentation and negligence. The plaintiff alleged that on or about September 1985, the first defendant ('D1') had requested him to allow his properties to be used as security for credit facilities granted by D7 to D1. The plaintiff was asked to meet the second defendant ('D2'), an advocate and solicitor, and the plaintiff then signed various documents in favour of the plaintiff.

The plaintiff alleged that, on or about February 1987, D7 informed him that he had signed a guarantee in favour of D7 in consideration of D7 making advances to a company called Masuddin Sdn Bhd ('the said guarantee'). The plaintiff contended that he had no knowledge of this transaction and that his signature in the said guarantee was fraudulently obtained by D2.

The senior assistant registrar ('SAR') allowed D7's application to strike out the plaintiff's statement of claim under O 18 r 19(1)(a), (b) or (c) of the Rules of the High Court 1980. This was the plaintiff's appeal against the decision of the senior assistant registrar.

**Held**, allowing the appeal:

(1) There was no merit in D7's contention that the statement of claim did not disclose any reasonable cause of action against D7. Based on the statement of claim alone, the plaintiff had a *prima facie* case against D7. The existence of the said guarantee purportedly executed by the plaintiff in the presence of an advocate and solicitor for the benefit of D7 did disclose a reasonable cause of action against D7 (see para 17).

(2) The plaintiff had positively alleged that he had no knowledge of the guarantee given in favour of D7. This allegation and the fact that D7 had conceded that the loan facility existed, constituted a prima facie cause of action against D7. Without hearing the evidence, it was not possible to fairly conclude whether the plaintiff's claim would succeed or fail (see para 24).

(3) The plaintiff's case was not scandalous or frivolous in nature. The plaintiff's allegations in the affidavits were specific and cannot be brushed aside (see paras 25, 26).

[**Bahasa Malaysia summary**

Kausa tindakan plaintif terhadap defendan ketujuh (D7), sebuah syarikat kewangan berlesen, adalah berdasarkan atas salah nyata fraud dan kecuaian. Plaintif mendakwa bahawa pada atau sekitar September 1985, defendan pertama ('D1') telah meminta kebenaran plaintif untuk menggunakan hartanya sebagai sekuriti untuk kemudahan kredit yang diberi oleh D7 kepada D1. Plaintif diminta berjumpa defendan kedua ('D2'), seorang peguam cara dan peguam bela, dan pada masa itu plaintif menandatangani pelbagai dokumen yang memihak kepada plaintif.

Plaintif mendakwa bahawa, pada atau sekitar Februari 1987, D7 memaklumkan kepadanya bahawa dia telah menandatangani suatu jaminan memihak kepada D7 untuk balasan D7 memberi pinjaman kepada sebuah syarikat bernama Masuddin Sdn Bhd ('jaminan tersebut'). Plaintif mengadu bahawa dia tidak mempunyai apa-apa pengetahuan mengenai transaksi tersebut dan juga mengenai tandatangannya di dalam jaminan tersebut yang telah diperoleh secara fraud oleh D2.

Penolong Kanan Pendaftar ('SAR') membenarkan permohonan D7 untuk membatalkan penyataan tuntutan plaintif di bawah O 18 r 19(1) (a),(b) atau (c) Kaedah-Kaedah Mahkamah Tinggi 1980. Ini merupakan rayuan plaintif terhadap keputusan Penolong Kanan Pendaftar.

**Diputuskan**, membenarkan rayuan tersebut:

(1) Tidak ada merit dalam pernyataan D7 bahawa penyataan tuntutan tersebut tidak mengandungi apa-apa kausa tindakan terhadap D7. Berdasarkan kepada penyataan tuntutan sahaja, plaintif mempunyai kes *prima facie* terhadap D7. Kehadiran jaminan tersebut yang dikatakan ditandatangani plaintif dengan kehadiran seorang peguam cara dan peguam bela untuk faedah D7 semestinya menunjukkan kausa tindakan terhadap D7 (lihat perenggan 17).

(2) Plaintif telah dengan nyata mendakwa bahawa dia tidak mempunyai pengetahuan tentang jaminan tersebut yang diberi untuk faedah D7. Dakwaan ini dan kenyataan bahawa D7 telah mengaku bahawa kemudahan pinjaman tersebut wujud, cukup untuk menunjukkan kausa tindakan *prima facie* terhadap D7. Tanpa mendengar bukti, tidak mungkin satu kesimpulan yang adil boleh dicapai sama ada tuntutan plaintif akan berjaya atau gagal (lihat perenggan 24).

(3) Kes plaintif tidak berniat jahat atau remeh. Dakwaan plaintif di dalam afidavit-afidavitnya adalah spesifik dan tidak boleh ditolak sewenang-wenangnya (lihat perenggan 25, 26).]

**Notes**

For cases on striking out of statement of claim, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 5631–5641.

**Legislation referred to**

Rules of High Court 1980 O 18 r 19(1)(a), (b), (c)

*VK Linggam (VL Lashmi (VK Linggam & Co) for the plaintiff.*
*Visvanathan (VS Visva & Co) for the seventh defendant.*

**Mohd Hishamudin J**:

**[1]** This is an appeal by the plaintiff against the decision of the learned senior assistant registrar who on 17 March 2004 had allowed the seventh defendant's application to strike out the plaintiffs statement of claim under O18 r 19(1)(a) or (b) or (c) of the Rules of High Court 1980.

**[2]** I have allowed the appeal with costs.

**[3]** There are two aspects of the seventh defendant's application, firstly, whether the plaintiff's case discloses no reasonable cause of action; secondly (and in the alternative), whether the statement of claim is scandalous, frivolous or vexatious.

**[4]** In order for the court to determine whether the plaintiff's statement of claim discloses no reasonable cause of action, I shall only examine the plaintiffs statement of claim.

**[5]** The plaintiff is a consultant psychiatrist and the first defendant is an individual. The second, third and fourth defendants are advocates and solicitors, practising under the name of Ms Adnan, Sundra and Low. The fifth defendant is the wife of the second defendant. The sixth defendant is a firm of solicitors; and the seventh defendant is a licensed finance company.

**[6]** In paras 7 and 8, the plaintiff alleges that on or about September 1985, he was approached by the first defendant who requested him to allow his landed properties at Kenny Hill in Kuala Lumpur and at Sungai Petani to be used as collateral securities for the purpose of obtaining a temporary banking facility to accommodate the first defendant on-going business venture. The first defendant had persistently requested the plaintiff to provide the collateral securities but however, the plaintiff had persistently refused the 1st defendant's requests.

**[7]** In paras 9, 10 and 13 it is also alleged that the first defendant persuaded the plaintiff to meet the second defendant and certain representations were made to the plaintiff. Believing that the representations were true, the plaintiff signed various documents, which the second defendant represented were transfers and assignments of the first defendant's properties in favor of the plaintiff. Thereafter, the second defendant further represented to the plaintiff that there were further sets of security documents including a promissory note; and acting on the belief in the truth of the said representations, the plaintiff signed another set of documents.

**[8]** The plaintiff further alleges in para 16 that the second defendant also induced the plaintiff to make out a cheque for a sum of RM510,415 in favor of the first defendant.

**[9]** With regard to the seventh defendant, the plaintiff alleges in para 23, that on or about February 1987, the plaintiff was informed by the seventh defendant that he had executed a letter of guarantee for an amount of RM950,000 in favor of the seventh defendant in consideration of the seventh defendant making advances to a company called Masuddin Sdn Bhd.

**[10]** The plaintiff further alleges that he has no knowledge of this transaction and states that the second defendant had fraudulently obtained his signature. Basically, this particular paragraph (para 23) in the statement of claim is the main ground of the plaintiff's cause of action against the seventh defendant for fraudulent misrepresentation and negligence.

**[11]** The plaintiff contends that the seventh defendant have acted fraudulently and perpetrated a fraud on the plaintiff by using the said letter of guarantee for their benefit without prior knowledge and consent of the plaintiff. The seventh defendant, having had notice that the guarantee was fraudulently obtained, had continued to use it for their benefit. This is specifically pleaded in para 25, where the plaintiff sets out the particulars of the fraud implicating all the defendants including the seventh defendant.

**[12]** In para 28 of the statement of claim, the plaintiff alleges that the seventh defendant has breached its fiduciary duty owed to the plaintiff and was guilty of negligence.

**[13]** Due to the alleged fraud and negligence on the part of the seventh defendant, the plaintiff had suffered loses as laid down in paras 24 to 31 of the statement of claim. The plaintiff's claim as against all the defendants is for fraud and negligence.

**[14]** The seventh defendant filed the present O 18 r 9 application to strike out the plaintiff's claim against it via encl 39 on the grounds that the plaintiff's statement of claim discloses no reasonable cause of action, and/or is scandalous, frivolous or vexatious.

**[15]** The seventh defendant submits that the plaintiff has failed to plead any material facts, which can constitute a reasonable cause of action against them.

**[16]** The plaintiff, on the other hand, submits that the plaintiff's statement of claim shall for the purpose of limb (a) of O 18 r 19(1), be presumed to be true; and that so long as the statement of claim discloses some cause of action, the plaintiff's action cannot be struck out. The plaintiff contends that on the statement of claim alone there are issues of law that require proper consideration by the court.

**[17]** After considering the submissions by both parties, I fail to see any merits in the seventh defendant contention that the statement of claim does not disclose any reasonable cause of action against the seventh defendant. After examining the statement of claim alone, ignoring for the moment the averments in the affidavits, I am satisfied that the plaintiff has *prima facie* a reasonable cause of action against the seventh defendant. The existence of a guarantee purportedly executed by the plaintiff in the presence of (allegedly) an advocate and solicitor for the benefit of the seventh defendant, to my mind, does disclose a reasonable cause of action against the seventh defendant, where the claim by the plaintiff is based on the torts of fraud and negligence.

**[18]** The seventh defendant proceeds to argue in the alternative that, based on the averments in the affidavits, the plaintiffs case is scandalous, frivolous or vexatious.

**[19]** For this purpose, I shall now examine the averments in the affidavits filed by both parties.

**[20]** The seventh defendant avers in its supporting affidavit that the basis of its application was that the plaintiff has not pleaded any material facts, which can constitute a reasonable cause of action against the seventh defendant. The seventh defendant further avers in its affidavit in support that the plaintiff had failed to plead specifically any losses or prejudice caused by any act of the seventh defendant to the plaintiff.

**[21]** Further, the seventh defendant denies enforcing any letter of guarantee against the plaintiff and avers that the alleged letter of guarantee referred to by the plaintiff in its statement of claim was not relied upon in the loan transaction between the borrower and the seventh defendant.

**[22]** It is also stated in the seventh defendant's affidavit in support that there was a settlement agreement entered into by the seventh defendant with the second and third defendants with respect to the loan agreement whereby the outstanding balance was fully paid and the alleged letter of guarantee was never referred to nor enforced by the seventh defendant against the plaintiff.

**[23]** The seventh defendant further alleges that the issues on fraud raised by the plaintiff in its statement of claim were against the other defendants and

none implicates the seventh defendant. The seventh defendant denies making any representations to the plaintiff at any stage regarding the loan transaction and thus, no issue of negligence arises as against the seventh defendant.

**[24]** The plaintiff has positively alleged that he has no knowledge of the guarantee given in favor of the seventh defendant. This allegation and the fact that the seventh defendant has conceded that the loan facility did exist, to my mind, do constitute a *prima facie* cause of action against the seventh defendant. Without hearing the evidence, it is not possible in my view, to fairly conclude whether the plaintiff's claim will succeed or fail.

**[25]** After giving full consideration of all issues raised in the affidavits, including paras 9–28 in the plaintiff affidavit at encl 40A, I am still of the view that the plaintiff's case is not scandalous or frivolous in nature.

**[26]** The plaintiff's allegations in his affidavits are very detail and specific, and cannot just be brushed aside.

**[27]** This is not a plain and obvious case which the court could take drastic order without permitting the plaintiff to proceed to trial.

*Appeal allowed with costs.*

Reported by Lim Lee Na